



# WISCONSIN REGULATORY DIGEST

## A Publication of the FUNERAL DIRECTORS EXAMINING BOARD

Volume 9, No. 1

June, 1999

### Court of Appeals Decision Concerning Joint Ownership

Cemetery Services International, Inc., appealed the decision of the Court of Appeals, District IV, which was rendered on September 10, 1998. However, the Supreme Court denied the appeal. Therefore, the decision of the Court of Appeals stands and the Department and the Funeral Directors Examining Board will take action to enforce the law. Meanwhile, some of the parties involved in the action had been looking beyond the court appeal and had begun exploring the possibility of amending the Joint Ownership Law that was passed several years ago. To keep abreast of what is happening, watch for legislative proposals and, perhaps, newspaper accounts.

### Issues Relating to Joint Ownership of Funeral Homes and Cemeteries

This issue has continued to fester a bit during the past few months. Several complaints have been filed against funeral directors who are on the board of directors of a cemetery. Meanwhile, the Funeral Directors Examining Board has asked Legal Counsel, Jacquelynn Rothstein, to prepare a written opinion that clarifies the current statutes and that more clearly addresses whether a funeral director may voluntarily, and without any pay, serve on the board of a non-profit cemetery. There has been some concern that an overly-narrow interpretation of the provisions in both the cemetery and funeral directors laws will seriously impair the operations of small, rural cemeteries.

### THE WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD

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### Legislative Update

### Biennial Budget Bill – 1999 AB 133/SB 45

This bill contains 12 items that were recommended by Governor Tommy Thompson and which directly or indirectly affect all credential holders in the Department of Regulation & Licensing. Some of the most noteworthy recommendations from the perspective of funeral directors are: the expansion of information technology services, creating an Information Technology Specialist position, extension of a Division of Enforcement project, line costs for background checks through the Crime Information Bureau, revised fees for original licenses and license renewal, permission for the Department to assess additional fees if an applicant requests the Department to process an initial application for a credential or a renewal application on an expedited basis, and authority for the Department to cancel a credential if a demand for payment under a credit or debit card transaction is not paid. The proposed fees for an original license as a funeral director or a funeral establishment would be \$47. The fee for renewing a funeral director's or funeral establishment license would be \$140 and \$47, respectively. The initial registration fee would increase by \$6. The fee for a funeral director's license would decrease \$4 and for a funeral establishment license would increase \$6. The fee for an original license is the same for all occupations and professions in the Department. Renewal fees, however, vary by the cost of enforcement of each type of credential and by the number of credential holders.

### Certificates of Good Standing

The Funeral Directors Examining Board has requested the introduction of a bill draft which would eliminate the current provisions relating to certificates of good standing. The bill would also eliminate the requirement that an applicant for renewal must furnish proof that the applicant is doing business at a regular licensed establishment.

### **Legal Clarifications**

According to the statutes and rules of the Funeral Directors Examining Board, every funeral establishment must have a full-time funeral director in charge of the funeral establishment. The Board has directed staff to

send letters to several funeral establishments, that, based on certain indications in the licensing records, may not have a full-time funeral director at each funeral establishment. The Board will make every effort to assure that every funeral establishment complies with this law.

### **Timelines in the Enforcement Complaint Handling Process**

The Department of Regulation and Licensing, with the assistance of the regulatory boards in the Department, has published the following timelines for processing and investigating complaints:

#### Screening Stage – 2 Tracks

1. 45 days (No records requested)
2. 60 days (Records or other additional information requested)

#### Investigative Stage – 2 Tracks

1. Simple, 90 days
2. Complex, 180

#### Legal Stage – 2 Tracks

1. Simple, 90 days
2. Complex, 180 days

#### Hearing Stage – 2 Tracks

1. Simple, 90 days
2. Complex, 180 days

### **Complaints Against Credential Holders**

During all of 1998 the Board had received 36 complaints against licensees. Twenty-nine complaints were closed at the screening stage; they were not opened for investigation. However, the board did close 40 cases after investigation (some of these were pre-1998 cases). Three cases were closed with formal disciplinary action. Twelve cases remain open for investigation or legal action.

### **Cemetery Task Force**

The last issue of the Regulatory Digest described a Cemetery Task Force that Secretary Marlene Cummings formed to study the current regulation of cemeteries in Wisconsin and to propose statutory changes to the law to be introduced in this Legislative Session.

#### **CEMETERY TASK FORCE**

April 1999

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**David Stucki**, AARP, PO Box 95, Waunakee WI 53597

## **Funeral Directors Apprentice Advisory Committee**

Secretary Marlene Cummings appointed an advisory committee to review the policies and procedures relating to apprentice funeral directors and to make recommendations for revising the statutes, rules and administrative procedures. The advisory committee has conducted two meetings and has identified the following issues that need attention:

1. Section 445.095 (1) (c), Stats., requires an annual renewal of the apprentice permit. However, Section 445.10(1), Stats., allows for a 4-year apprenticeship.

2. The need for better communications between the Department of Regulation and Licensing and the Department of Workforce Development, Bureau of Apprenticeship Standards (BAS). Applications of the two agencies are not in sync.

3. Can school time be credited toward the apprenticeship, especially the summer internship? MATC has a (9-month per year) 2-year associate degree program. They have 70-80 students. Forty students qualify for internship during the summer between the 1st and 2nd year. There are 50 mortuary schools in the country.

4. How we relate to out-of-state schools (the mortuary curriculum is prescribed by the American Board).

5. The school curriculum needs some attention.

6. Wisconsin uses its own exam. Should it continue to do so?

7. Confusion by apprentices concerning the role of the Department of Regulation and Licensing (R&L) and BAS.

8. The Board's work-study program duplicates the school curriculum.

9. The policy and the procedures which require monthly reports from apprentices. There is no follow-up by R&L staff. Are the reports needed? Do they duplicate the schooling?

10. There would be some advantages to having a field representative of R&L, as was had years ago.

11. Need for more observation of apprentices performing funeral arrangements, as is done in the internship program.

12. Re-define “supervision” and “personal supervision” What is adequate supervision while on apprenticeship, especially when doing embalming?

13. Update the list of texts provided to apprentices.

14. Should apprenticeship be prior to schooling?

15. Mortuary school prepares for the exam. Apprenticeship prepares for practice.

16. Concern expressed about the use of terminology by some persons. A “funeral home” is not a “shop.” An “instrument” is not a “tool.” The “funeral business” is not a “trade.”

17. The requirement that an apprentice have sophomore status. This conflicts with start dates and application dates.

18. The fact that there are two application forms -- one for the Board and one for BAS.

19. The need for some apprentices to take duplicate courses because MATC will not accept some comparable courses at an institution of higher learning.

20. Where can the apprentice work? Multiple funeral homes of the same owner/operator, even though R&L assigns the apprentice to a specific funeral home?

21. The acceptance or non-acceptance of the credits of out-of-state apprentices.

22. The need to avoid artificial barriers to entry into the profession.

23. Current practice of paying apprentices while in school. BAS “unassigns” the apprentice, but the apprentice still holds an apprentice permit from the Board. This arrangement is based on the fact that MATC’s schooling is a 9-month per year program.

AD HOC FUNERAL DIRECTOR APPRENTICE  
ADVISORY COMMITTEE

April 1999

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### **Revisions to Solicitation Rule**

The Board conducted a hearing on proposed revisions to FD 6.10, relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy. The rule provisions pertain to live voice contacts and automatic or artificial telephone dialing systems. The current rule has a sunset date of January 1, 2000. The testimony and correspondence submitted at the hearing were all in support of the proposed rule. Since the Board received no other written comments during the 2 additional weeks provided for that purpose, the Board authorized staff to send the rule to the Senate and Assembly committees for their review. If the committees do not object to any of the provisions in the rule, the rule will become law within the next few months.

### **Training Programs For Agents of Burial Agreements**

As stated in the last issue of the Regulatory Digest, some funeral directors and insurance agents had expressed a problem, relating to obtaining the 20 hours of training in a timely manner. The problem had stemmed from the fact that some courses were canceled, because the provider had an insufficient number of students scheduled. Thus, a request was made to the Board to permit students to take the training course in a monitored location with attendance strictly enforced, but with either live or videotaped instructors. The board granted this request, but rejected another proposal that the Board should change the law and provide for a 90-day window during which the agent could sell insurance-funded burial plans without completing the training.

Department of Regulation and Licensing  
Funeral Directors Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

RETURN SERVICE REQUESTED

### **Regulation of Crematories**

Board member, Daniel Densow, has been regularly reporting to the Board on a statutory proposal, relating to the regulation of crematories and cremation in the state of Wisconsin. He has reported that Wisconsin is inadequate in addressing cremation and cremation procedures and that consumers would be better protected if there were some guidelines and minimum standards established. He has promised a proposal which proactively addresses problems that could occur and which, at the same time, avoids over-regulation. The Board would like to have a bill introduced during the 1999 Legislature.

### **Inspection of Funeral Establishments**

The Board has reviewed the policies and procedures relating to the inspection of funeral establishments. In the past, staff of the Department of Regulation and Licensing inspected a funeral establishment every time a new license was issued, as is required for a change of ownership, a move to a different location or the construction of a new facility. However, the Board has now directed that staff inspect a funeral establishment only when there is a move to a new location. In addition, the application form for a funeral establishment license will be amended to include many of the inspection questions that were being used by departmental staff for all the inspections that were being carried out.

### **Disciplinary Actions**

DANIEL L. NEWCOMER  
FUNERAL DIRECTOR  
BRODHEAD WI

REPRIMAND

Refused to comply with a daily authorized request for information by the board in a timely manner. Performed services in a manner which fell below minimum practice. Engaged in misleading or deceptive conduct. Effective 3/16/99. Sec. 445.04(2), Stats. FD 3.02(5), (6),(9) Case #LS9903162FDR

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### Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>  
Send comments to [dorl@mail.state.wi.us](mailto:dorl@mail.state.wi.us)

### Copies of Regulatory Digest on the Web

See Web Site for past digest(s).

### Wisconsin Statutes and Code

Copies of the Funeral Directors Examining Board Statutes and Administrative Code can be ordered through the Board Office. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated November, 1997.

### Change of Name or Address?

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**WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.**

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